

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARK WAYNE CLARK

Plaintiff,

v.

ROBERTA F. KANIVE, *et al.*,

Defendants.

Case No. C10-5203RBL

REPORT AND RECOMMENDATION

Noted for November 26, 2010

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4.

The matter is before the court on plaintiff's motion for entry of default (ECF No. 27). In his motion for default, plaintiff asks the court to enter default against defendants Tandra Zanders, Cheryl Matthynssens, Christopher Reed, Erik Knudson, John/Jane Doe #1, and John/Jane #2. The motion was filed on or about September 15, 2010, and each of the individuals identified are employees of the Spectrum Company, which operates a work program at the

REPORT AND RECOMMENDATION- 1

1 Stafford Creek Corrections Center where plaintiff was in custody. Significantly, on or about  
2 September 23, 2010, counsel appeared on behalf of the named Spectrum defendants in addition  
3 to Tracy Harding (ECR No. 30). The Spectrum defendants also filed an Answer to the  
4 Complaint (ECF No. 31) and a response to the motion for entry of default (ECF No. 32).

#### 5 DISCUSSION

6 The Federal Rules of Civil Procedure require defendants to answer a complaint within  
7 twenty (20) days from the date being served with the summons and complaint, or if service of the  
8 summons was timely waived, within sixty (60) days after the date when the request for waiver  
9 was sent. Fed. R. Civ. P. 12(a). If a defendant fails to respond within that time, a default  
10 judgment may be entered. Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986), *cert. denied*, 108  
11 S.Ct. 198 (1987). Default judgments are generally disfavored and the court prefers a decision on  
12 the merits, In re Hammer, 940 F.2d 524, 525 (9th Cir. 1991).

13 The court should deny plaintiff's motion for entry of default against the Spectrum  
14 defendants. Counsel has appeared and an answer to plaintiff's complaint has been filed on  
15 behalf of the defendants to whom plaintiff seeks default. As noted above, the court disfavors  
16 default and prefers that this matter should proceed on the merits of the case. Plaintiff argues the  
17 appearance and answer were untimely; however, he has not shown any prejudice due to the  
18 alleged untimely response to his complaint. Accordingly, entry of default against these  
19 defendants would be inappropriate.

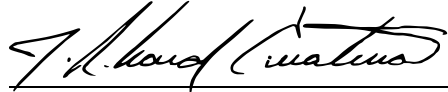
#### 20 CONCLUSION

21 Based on the above, plaintiff's motion for entry of default (ECF No. 27) should be  
22 denied. Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. Pro., the parties shall have fourteen  
23 (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6.

1 Failure to file objections will result in a waiver of those objections for purposes of appeal.

2 Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the  
3 clerk is directed to set the matter for consideration on **November 26, 2010**, as noted in the  
4 caption.

5 Dated this 3<sup>rd</sup> day of November, 2010.

6  
7 

8 J. Richard Creatura  
9 United States Magistrate Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26